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THOMAS F. MCFARLAND

August 18, 2005

AUG 24 2005
RECEIVED

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

Re: STB Docket No. AB-914X, *McCloud Railway Company -- Abandonment and
Discontinuance of Service Exemption -- in Siskiyou, Shasta and Modoc Counties,
CA*

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Reply To Protest Of Dicalite Minerals
Corp., for filing with the Board in the above referenced matter.

ENTERED
Office of Proceedings

AUG 24 2005

Part of
Public Record

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for McCloud
Railway Company

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BEFORE THE
SURFACE TRANSPORTATION BOARD

McCLOUD RAILWAY COMPANY --)	
ABANDONMENT AND)	
DISCONTINUANCE OF SERVICE)	DOCKET NO.
EXEMPTION -- IS SISKIYOU, SHASTA)	AB-914X
AND MODOC COUNTIES, CA)	

**REPLY TO PROTEST OF
DICALITE MINERALS CORP.**

McCLOUD RAILWAY COMPANY
801 Industrial Way
P.O. Box 1500
McCloud, CA 96057

Petitioner

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204

Attorney for Petitioner

DUE DATE: August 24, 2005

BEFORE THE
SURFACE TRANSPORTATION BOARD

McCLOUD RAILWAY COMPANY --)	
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AND MODOC COUNTIES, CA)	

**REPLY TO PROTEST OF
DICALITE MINERALS CORP.**

Pursuant to 49 C.F.R. § 1104.13(a), McCLOUD RAILWAY COMPANY (MCR) hereby replies to a protest filed by DICALITE MINERALS CORP. (Dicalite) on August 4, 2005.

I. The Protest Fails To Sustain The Burden Of Proof For Partial Denial Of Abandonment Between Mt. Shasta and Cayton Siding

As shown in MCR's petition for exemption (at 7), Dicalite shipped 194 cars over the involved rail line in 2004. That constituted only about 10 percent of the 1,820 cars that were shipped over the line that year. The shipper who accounted for 90 percent of the traffic on the line -- Sierra Pacific -- has not protested the proposed abandonment.

Dicalite appears to seek partial denial of abandonment between Mt. Shasta and Cayton Siding, CA. (Protest at 2). As the proponent of partial denial of abandonment, Dicalite has the burden of proof to establish the viability of that line segment. *Conrail Aban. - Bet. Warsaw & Valp. Counties, IN*, 9 I.C.C.2d 1299, 1339 (1993); *State of Maine v. ICC*, 587 F.2d 541 (1st Cir. 1978).

Dicalite made no attempt to sustain that burden. Dicalite failed to provide alleged revenues, costs and return on value for that segment. Its failure in that respect no doubt is due to

the patent absence of economic viability of that segment. Dicalite's 194 cars per year constitute barely 3 cars per mile per year over that 64.3-mile segment.^{1/} There is no way that MCR could earn an operating profit, much less a reasonable return, at that sparse traffic level.

As a result of Dicalite's failure to sustain its burden of proof for a partial abandonment, the evidence in MCR's petition that continued operation of the rail line would result in extensive avoidable operating losses, bridge rehabilitation costs and economic losses stands un rebutted. The resulting substantial burden on MCR and on interstate commerce from a requirement of continued operation of the line provides a compelling legal basis for a decision granting an exemption for abandonment of the rail line.

II. The Protest Fails To Effectively Rebut MCR's Evidence On Alternative Transportation

Most telling is Dicalite's acknowledgment that MCR transports only 15 percent of Dicalite's production. (Protest at 2). Presumably, the other 85 percent of Dicalite's production is transported by truck. In light of Dicalite's current substantial reliance on trucks for the great majority of its transportation needs, the effect of loss of rail service would necessarily be relatively minor.

Similarly, by Dicalite's admission, its rail shipments are first trucked 3.5 miles from its plant to the rail siding at Cayton Siding. (Protest at 2). In the event of abandonment, those shipments would have to be trucked greater distances to remaining rail sidings at McCloud or

^{1/} It is 16.3 miles from Milepost 16.3 at Mt. Shasta to Milepost 0.0 at McCloud. (Petition at 3). It is 48 miles from Milepost 0.0 at McCloud to Milepost 48.0 at Cayton Siding. Thus, it is 64.3 miles between Mt. Shasta and Cayton Siding.

Nubieber, CA. Dicalite has not informed the Board of the distances involved. It appears to be approximately 50 miles from a point near Cayton Siding to either McCloud or Nubieber. Highway access from the Cayton Siding area to either McCloud or Nubieber is good -- via California Highway 89 to McCloud and via that highway and California Highway 299 to Nubieber. Dicalite undoubtedly makes extensive current use of those highways for the 85 percent of its traffic that currently is transported by truck. Dicalite's current use of truck-rail transportation and its extensive use of all truck transportation support a finding that truck-rail transportation via McCloud or Nubieber would be a logistically feasible transportation alternative in the event of abandonment of the involved rail line.

Dicalite's protest throws around some numbers (at page 2) as alleged increased costs in the event of abandonment, but the amounts stated were not substantiated nor explained. Thus, more than \$50,000 is said to be required as "infrastructure costs for loading and maintenance facilities" (*id.*). The protest does not identify nor explain the loading and maintenance facilities alleged to be required, and it does not appear whether the alleged infrastructure cost would be a one-time capital cost or an annual operating expense. Similarly, the protest refers to "a truck traffic increase of 33%" (*id.*). It is not clear whether it was intended to state that there would be an increase in cost for truck traffic of 33 percent. Even if that was the intent, the allegation is insufficient without identification of current and future truck costs. In sum, much more in the way of specific evidence is required before the Board could rationally find that Dicalite's transportation costs would increase by more than \$150,000 per year in the event of abandonment.

III. The Protest Fails To Effectively Rebut MCR's Evidence On Increased Truck Traffic After Abandonment

Lastly, Dicalite takes issue with MCR's contention that diversion of rail traffic to truck-rail or all-truck transportation would not add appreciably to truck traffic volume on area highways. (Protest at 2-3).^{2/} There was no showing in the protest that the commodities transported over the involved rail line have the equivalent of four to six truckloads per rail carload. Lumber and woodchips, which constitute 90 percent of the rail traffic on the line, cannot be loaded heavily on the light-weight rail on the involved rail line. Consequently, a rail carload of those commodities translates to about 3.5 truckloads. (RVS Forbis). Moreover, MCR's rail traffic has radically declined from 2004 to 2005. (*Id.*). Consequently, there would be a substantially lesser number of additional trucks on area highways in the event of abandonment than the number claimed by Dicalite. (*Id.*).

^{2/} Dicalite incorrectly states (Protest at 2) that MCR's statement to that effect is on page 4 of the MCR petition. Actually, MCR's statement is on page 4 of Appendix 5 of that petition.

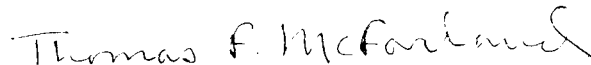
CONCLUSION AND REQUESTED RELIEF

For the foregoing reasons, Dicalite's protest does not negate the showing in MCR's petition that an exemption for abandonment is warranted in accordance with the standards of 49 U.S.C. § 10502(a). Consequently, the Board should grant MCR's petition for exemption.

Respectfully submitted,

McCLOUD RAILWAY COMPANY
801 Industrial Way
P.O. Box 1500
McCloud, CA 96057

Petitioner



THOMAS F. McFARLAND
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208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204

Attorney for Petitioner

DUE DATE: August 24, 2005

REBUTTAL VERIFIED STATEMENT OF JEFF FORBIS

My name is Jeff Forbis. I am President of McCloud Railway Company (MCR). I verified the facts asserted in MCR's Petition for Exemption from 49 U.S.C. 10903, filed on June 27, 2005 in this proceeding. This rebuttal statement is responsive to allegations contained in the unverified protest of Dicalite Minerals Corp. (Dicalite) filed on August 4, 2005 in this proceeding.

Dicalite acknowledges that MCR transports only 15 percent of Dicalite's production as bulk filteraids. (Protest at 2). Dicalite states that its corn syrup filtration business has increased in volume by 65 percent since 2000 (*id*). Dicalite states that it was "anticipating and counting on further growth into this market" (*id*). Dicalite seeks to create the impression that its use of the rail line has been increasing, and would continue to increase.

The facts do not bear that out. During the five-year period between 1992 and 1996, inclusive, Dicalite shipped an average of 238 cars per year by rail. During the eight-year period between 1997 and 2004, inclusive, Dicalite shipped an average of only 163 cars per year by rail, a decline of 46 percent. The yearly totals were as follows:

<u>YEAR</u>	<u>CARS</u>
1992	237
1993	227
1994	193
1995	271
1996	262
1997	193
1998	153
1999	103
2000	146
2001	160
2002	165
2003	189
2004	194

The truth is that Dicalite is making significantly less use of the rail line than it did in the past.

Dicalite contends that loss of the rail line will have an adverse fiscal impact on it of more than \$150,000 per year. (Protest at 2). I am not able to comment on that claim because Dicalite has not provided an explanation of how it arrived at that alleged amount of loss.

Dicalite has alleged that one rail carload equals 4 to 6 truckloads, depending on the commodity. (Protest at 2). That is not the case for the rail traffic on MCR's line. Ninety percent of that traffic consists of lumber or wood chips. At permissible rail loadings on the lightweight rail in MCR's line, an average rail carload of lumber or wood chips equals about 3.5 truckloads.

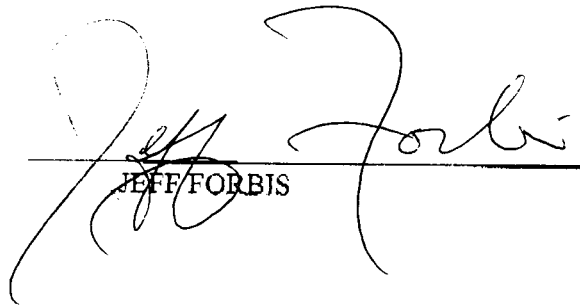
The increased truck traffic would be much less than suggested by MCR's 2004 rail traffic volume of 1,820 carloads. MCR's rail traffic volume is down significantly in 2005. Through July 31, 2005, MCR has transported only 549 carloads. At that pace, MCR's 2005 rail traffic volume will be only 941 carloads. That is only about half of MCR's 2004 rail traffic volume.

Docket No. AB-914X

VERIFICATION

STATE OF CALIFORNIA)
) SS:
COUNTY OF SISKIYOU)

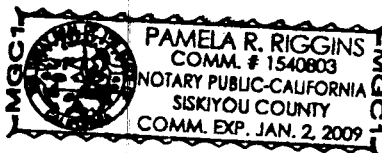
JEFF FORBIS, being duly sworn on oath, deposes and states that he has read the foregoing statement, that he knows the contents thereof, and that the facts therein stated are true and correct.


JEFF FORBIS

SUBSCRIBED AND SWORN to
before me this 12 day
of August, 2005.

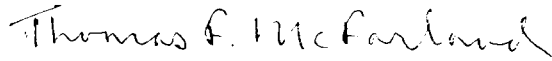

Notary Public

My Commission Expires: Jan. 2, 2009



CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2005, I served the foregoing document, Reply To Protest Of Dicalite Minerals Corp., on Mr. Barry L. Katz, Esq., Dicalite Minerals Corp., 225 City Avenue, Suite 14, Bala Cynwyd, PA 19004, by first-class, U.S. mail, postage prepaid.



Thomas F. McFarland